IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NUMBER 363 OF 2005
IN
COMPANY PETITION NUMBER 492 OF 2004

Shamrock International Ltd. ....Appellant

V/s.

Amrutanjan Ltd. ....Respondent

Mr.S.H. Doctor, Senior Counsel with Mr.K.A. Setalwad i/b N.Srivastava for the Appellant.

Ms.N.S. Nippinai for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 27TH APRIL, 2005.

P.C. :

1. This is an Appeal against the order of the learned single Judge passed in the above company petition filed by the Respondent for winding up the Appellant Company. The learned Judge directed the Company to deposit, a sum of Rs.50 lakhs within four weeks, failing which the petition was ordered to stand admitted. The learned Judge also passed the usual consequential orders in the event of the Company failing to deposit the said amount.

2. The Respondent i.e. the original Petitioner, filed the above petition for winding up of the Appellant Company on the ground that the Appellant was indebted to the Respondent in the sum of about Rs.1,00,00,000/- (Rupees one crore) in respect of goods, admittedly sold and delivered by the Respondent to the Appellant. There is no dispute that the said goods were sold and delivered by the Respondent to the Appellant. There is no dispute that the Appellant received the said goods. There is no dispute that the Appellant has retained and appropriated the said goods. There is no dispute that in respect of the said goods an amount of about Rs.1,00,00,000 is due and payable by the Appellant to the Respondent. The only defence is that there was a delay on the part of the Respondent in delivering the said goods to the Appellant. The Appellant therefore contends that it has a counter-claim against the Respondent for the damages allegedly suffered by it as a result of the delay in delivery of the said goods.

3. The learned Judge held that it was not possible to accept the contention of the Appellant for various reasons. He held that at the time of delivery the Appellant was aware of the fact that the same was delayed, and despite the same did not protest or raise

any objection in regard thereto. It is further held, that the Appellant never returned, or even offered to return the said goods. It was further held that no objection to the delay in delivery was raised till the Respondent served the statutory notice on the Appellant. Despite the delay in the delivery of some of the consignments the Appellant continued to receive consignments of the said goods from the Respondent after the receipt of the statutory notice served.

4. We are in respectful agreement with the learned Judge and intend adding only a few words of our own. The impugned order warrants no interference, at least so far as the Appellant is concerned. We are of the view that considering the facts and circumstances of the case, the learned Judge has in fact shown considerable indulgence in favour of the Appellant.

5. Mr.Doctor, the learned senior counsel appearing on behalf of the Appellant submitted that the finding of the learned judge, that the Appellant did not object to or raise any demand for the alleged delay in delivery of the goods by the Respondent to the Appellant is incorrect. He submitted that in view of the admitted position that there was a delay in the

delivery of the goods the Appellant is certainly entitled to damages for the same. The Appellant has computed these damages under various heads in a statement filed in court.

6. We have been through the entire record and are unable to accept Mr.Doctor's submission. Even assuming that there was some demand by the Appellant prior to the issuance of the statutory notice by the Respondent it would make no difference. The defence is clearly an afterthought. It is clear to us that the sole intention of the Appellant is to avoid payment of the Respondents dues. This is clear, inter-alia from the various admissions of the Appellant. For instance, by a letter dated 19th March, 2003 the Appellant admitted that an amount of Rs.83 lakhs was due by it to the Respondent. The Appellant stated that it had submitted a letter to its bank to accept the payment of Rs.35 lakhs as a part payment and that the balance payment of Rs.48 lakhs would be made on or before 30th April, 2003. By a further letter dated 3rd November, 2003 the Appellant, once again reassured the Respondent, that it had lined up and planned payment of Rs.48 lakhs ; that its officer had planned a visit to Chennai on 15th/16th November, 2003 after settlement of the said sum of

Rs.48 lakhs in order to settle and discuss further balance payments as well. The Appellant therefore requested the Respondent to release the consignment immediately.

7. In the circumstances, we are in agreement with the learned Judge that the defence is nothing but an afterthought and solely with a view to avoid payment of the Respondents dues. Moreover it is pertinent to note that most of the damages claimed by the Appellant, are remote damages, which cannot be granted. Further, there is no evidence whatsoever of the difference between the market price and the contract price in respect of the goods which according to the Appellant were supplied after considerable delay.

8. The only indulgence, we are inclined to grant the Appellant is to permit the Appellant at its option, instead of depositing an amount of Rs.50 lakhs, to deposit a sum of Rs.25 lakhs and furnish a bank guarantee for the remaining amount of Rs.25 lakhs. The Appellant is granted, 12 weeks from today to do so.

9. Subject to the aforesaid the Appeal stands

dismissed.